



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 21, 1996

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR96-0373

Dear Ms. Nguyen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 36976.

The City of Houston (the "city") received a request for:

1. All contracts -- final and draft -- concerning the leasing rights to the Summit with either Arena Operating Corporation ("AOC") or the Houston Aeros.
2. All documents, final and draft, relating to leasing rights to the Summit that reference the Houston Rockets.
3. Any other documents that reference the Houston Rockets that relate to leasing of the Summit.

You state that the city will release most of the requested information to the requestor. However, you claim that some of the requested information is excepted from disclosure under sections 552.103, 552.107, and 552.110 of the Government Code. At this time, we are not ruling on the commission's claimed exception under section 552.110 of the Government Code. We will rule on that portion of your request after soliciting additional briefing based on this office's decision in Open Records Decision No. 639 (1996). You may withhold the documents that are the subject of your claimed section 552.110 exception pending our ruling on that exception.

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. We conclude that the information contained in Exhibits 3, 3-2, and 3-3 is excepted from disclosure under section 552.107(1). We also conclude that some of the information contained in Exhibit 3-1 is excepted from disclosure under section 552.107(1). However, we conclude that the city has not met its burden in showing how some of these notes contain attorney-client communications or client confidences within the section 552.107(1) exception. You claim that "[s]ome of these notes were taken in a closed meeting with the Mayor of the City of Houston." [Emphasis added]. However, you have in no way indicated which notes were taken in that meeting, nor have you identified to whom any of the other notes were communicated. We have marked the information in Exhibit 3-1 that the city may withhold under section 552.107(1). The city may not withhold the remainder of the information in Exhibit 3-1 under section 552.107(1).

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The city must meet both prongs of this test for information to be excepted under section 552.103(a).

The city has submitted a petition in which the city and others have been sued for alleged violations of the Americans with Disabilities Act of 1990. Therefore, the city has met the first prong of the test. We conclude that the information in Exhibit 3-1 which the city has marked under section 552.103(a) and the information in Exhibit 5 are related to the pending litigation and may be withheld under section 552.103(a) of the Government Code. We note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 36976

Enclosures: Marked documents

cc: Mr. David Patent
Baker & Botts, L.L.P.
One Shell Plaza
910 Louisiana
Houston, Texas 77002-4995
(w/o enclosures)